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# MOTION AND BRIEF OF AMERICAN CIVIL LIBERTIES UNION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1941**

## No. 745

THE SCHENECTADY UNION PUBLISHING COMPANY,

*Petitioner,*

*vs.*

MARTIN L. SWEENEY,

*Respondent.*

**On Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.**

EDMUND D. CAMPBELL,
*822 Southern Building,*
*Washington, D. C.,*
*Attorney for*
*American Civil Liberties Union.*

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## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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MAY IT PLEASE THE COURT:

The undersigned, as counsel for the American Civil Liberties Union, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae*. Special reasons in support of this motion are set out therein.

Dated, March 2, 1942.

EDMUND D. CAMPBELL,
*822 Southern Building,*
*Washington, D. C.,*
*Attorney for*
*American Civil Liberties Union.*

**BRIEF ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE**

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The American Civil Liberties Union is a non-partisan national organization with many members resident in the District of Columbia. Its objects are defined in its charter "to maintain throughout the United States and its possessions the rights of free speech, free press, free assemblage and other civil rights and to take all legitimate action in furtherance of such purposes."

Its position has always been that the frontiers of the right of free speech are limited by the right to sue for libel. The only issue, therefore, with which the American Civil Liberties Union can properly be concerned is where the line should be drawn. It is particularly concerned with the assertion of the respondent here that the statements made by the petitioner of and concerning him are libelous *per se*.

It is the considered opinion of the American Civil Liberties Union that it is not libelous *per se* to say of a public

official or one who engages in public discussion that he holds one opinion or another on a public issue. It is submitted that the ruling of the District Court was in all respects correct and that the decision of the Circuit Court of Appeals should be reversed.

The American Civil Liberties Union has often urged in the past that the greatest possible freedom be maintained in discussion of public issues. (See *People* v. *Edmondson*, 168 Misc. (N. Y.) 142). The extension of the law of libel, as urged by the respondent, to impose punitive damages for imputing opinions to a public official would limit the area of free speech to the impairment of the petitioner's Constitutional rights. Courts should be bound no less than legislatures and executives to respect the Constitutional guarantees of free speech and free press. In determining the proper boundary at which the courts may limit free speech and free press by the imposition of punitive damages for alleged defamatory statements, the individual interest in the integrity of one's personal reputation must be balanced against the social interest in freedom of expression. It is submitted that in so far as public officials are concerned, the policy requirements of the private interests are superseded by the public interest to discuss without fear the qualifications and opinions of elective officers.

Our position is well stated in the dissenting opinion of Mr. Justice Clark, of the Circuit Court of Appeals for the 2nd Circuit, in the case below, *Sweeney* v. *Schenectady Union Pub. Co.*, 122 F. (2d) 288 (adv. sheets), which reversed an order of the District Court dismissing the complaint for failure to state a cause of action. After a discussion of the New York cases dealing with the "public official" rule, he characterized them as holding not libelous *per se* comments on public officers even more directly suggesting corrupt motives than does the one here which charges rather bigotry and prejudice than corruption or impropriety. He went on to say:

"• • • It would be a fine world to live in if only tolerance were so usual that a charge of the lack thereof against a public official could be so presumptively untrue that it would seem on its face unfair and libelous. But in our present world we must not take the naive view that what ought to be is, and that whoever suggests the contrary is a slanderer; for if we do so, we shut off all healthy criticism of prejudice, and allow bigotry full scope to act with impunity. Even more dangerous is the rationale of the decision that a comment leading an appreciable number of readers to hate or hold in contempt the public official commented on is libelous *per se*. Its broad sweep would take in comments found day after day in the most conservative newspapers, either in direct statement or as quotations of responsible critics, that a public official, particularly a legislator, is pro- or anti-labor, or pro- or anti-Nazi, or pro or anti this or that race, color, or creed. Minority comment on labor, religious and political views and activities of politicians becomes therefore hazardous. And the making of fine distinctions in rationale is indicated by the implication that a comment suggesting plaintiff's objection to the judicial candidate for his foreign birth alone would have been proper. *Of course, the uncertain threat of suit, invited by a rule at once so vague and so extensive, is a restriction on freedom of the press almost as direct as a rule of clear liability.*" *Sweeney* v. *Schenectady Union Publishing Co.*, supra 291, 292. (Italics ours.)

It is our belief that if the punitive penalty of libel *per se* were to attach to the article complained of, there would be an unconstitutional deprivation of the right of free speech and a free press.

We respectfully submit that the order of the Circuit Court of Appeals should be reversed.

EDMUND D. CAMPBELL,
*Attorney for American*
*Civil Liberties Union.*